

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

In Re:)	C/A No. 2:20-3376-BHH-MHC
)	
Cynthia Collie Holmes,)	
)	
Debtor,)	
)	
)	
<hr/>)	
Cynthia Collie Holmes,)	
)	
Appellant,)	<u>ORDER</u>
)	
v.)	
)	
Kevin Campbell, Trustee,)	
James Kevin Holmes,)	
)	
Appellees,)	
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This case is a pro se appeal from the United States Bankruptcy Court for the District of South Carolina filed by Appellant Cynthia Collie Holmes (“Appellant Holmes”). The docket number for the underlying bankruptcy action is Case No. 19-01644-DD (Adversary Proceeding No. 20-80046-DD).

On September 7, 2021, this Court entered an order directing Appellant Holmes to inform the Court in writing within ten days as to her intent to dismiss this case in accordance with an order filed in the underlying bankruptcy action on August 3, 2021. The August 3 bankruptcy court order granted Appellant Holmes’ motion to dismiss the bankruptcy action pursuant to 11 U.S.C. § 707.

(ECF No. 45.) *See also In re Holmes*, No. 19-01644-DD, 2021 WL 3834168, at *1 (Bankr. D.S.C. Aug. 3, 2021). According to the August 3 bankruptcy court order, Appellant Holmes agreed to the withdrawal of all pending appeals as a condition of the dismissal of the bankruptcy action. *Id.* at *1. Further, the bankruptcy court’s order specifically stated, “Debtor and trustee are directed to seek dismissal of all pending appeals from Bankruptcy Court orders.” *Id.* at *2.

On September 14, 2021, Appellant Holmes filed a motion to reconsider this Court’s September 7 order, pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, requesting additional time to respond and objecting that the order should have been directed towards both her and the Trustee. (ECF No. 49 at 5.) Appellant Holmes also asserts that she was not initially served with the Trustee’s August 26 filing at ECF No. 45, but it appears that a new certificate of service for ECF No. 45 was placed in the mail from the Clerk’s Office to Appellant on September 10, 2021. (ECF No. 48.)

Two days after filing her motion to reconsider, Appellant Holmes filed a “stipulated dismissal,” which was docketed as a motion to dismiss because not all parties to the action signed the stipulation. *See* Fed. R. Civ. P. 41(a)(1)(A)(ii) (explaining that a plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by *all* parties who have appeared). Specifically, Appellee James Kevin Holmes did not sign the filing, but the filing does include signatures for the Trustee, Trustee’s counsel, and Appellant Holmes, and it states: “The appellant, trustee, and trustee’s counsel respectfully submit stipulated dismissal of this appeal and stipulate that all lower court orders in this adversary proceeding are deemed of no effect and/or vacated including, but not limited to, those included in this appeal.” (ECF No. 50.)

After review, and in light of Appellant Holmes' most recent filing, the Court finds no basis to grant Appellant Holmes relief under Rule 59(e). Specifically, Appellant Holmes' September 16 filing makes it clear that she and the Trustee intend to dismiss this case in accordance with the bankruptcy court's August 3 order. While the Court does not approve the specific language of the September 16 filing, the Court does find dismissal of this appeal appropriate under the circumstances as no party has made any showing that this appeal should not be dismissed as moot based on the bankruptcy court's August 3 order.

Accordingly, for the foregoing reasons, the Court denies Appellant Holmes' Rule 59(e) motion (ECF No. 49); the Court denies as moot Appellant Holmes' initial motion to stay (ECF No. 5); and the Court grants the motion to dismiss (ECF No. 50) and hereby dismisses this appeal as moot in accordance with the bankruptcy court's August 3 order.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

September 22, 2021
Charleston, South Carolina